IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7752 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NIRANJAN D. BHATT & 1 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR RA MISHRA for Petitioner(s) : 1 - 2.
MR DIPAN DESAI, AGP for Respondent(s) : 1,
LAW OFFICER BRANCH for Respondent(s) : 2 - 3.
MR JB PARDIWALA for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 23/11/2005

ORAL JUDGMENT

1.The petitioners have preferred this petition for declaration that the petitioners are appointed on the posts of Bailiff and Peon at Labour Court, Amreli on

regular, permanent basis from their date of initial appointment dated 22.06.1998 and the petitioners are entitled to all the benefits of regular Bailiff and Peon in all respect of service conditions and the petitioners have prayed for directions to direct the respondents to absorb and continue them in service as regular Bailiff and Peon with all service benefits. By amendment, the petitioners have prayed to challenge the Resolution of the Government dated 29.08.1997 for appointment on contractual basis on the posts of Bailiff and Peon.

2.Upon hearing Mr. Mishra, learned counsel for the petitioners and Mr. Pardiwala, learned counsel for respondent Nos. 2 & 3 and Mr. Dipan A. Desai, Asst. Government Pleader for respondent No. 1, it appears that on factual aspects, there is no dispute on the points as under:

1)That the posts over which, the petitioners were appointed were till a particular date.

2)The posts were to be filled up as per the policy of the Government on contract basis.

3)The advertisement was issued for filling up of the

posts on contract basis.

4)The petitioners accepted the terms and conditions for employment on contract basis.

5)The period of contract is over and the petitioners are not continued in service.

6)The regular selection has taken place for the permanent posts of Bailiff and Peon and the regularly selected candidates are appointed.

3. In view of the aforesaid factual position, when the appointment was on contract basis and the petitioners having consciously accepted the appointment, if upon expiry of the period of contract the petitioners are not continued and when both the petitioners had applied for regular selection process and are not selected as the regularly selected candidates, the petitioners cannot seek a declaration that the petitioners were appointed on regular and permanent basis.

4.Further, there were no permanent posts of Bailiff and Peon at the relevant point of time when the petitioners were appointed. Thereafter, the permanent posts are created and the petitioners have also participated in the said posts. The petitioners were considered and

they are not selected for the posts.

5. Under these circumstances, when the regularly selected candidates are available and are already appointed on permanent basis, direction cannot be given to absorb the petitioners in service on permanent basis. Reference may be made to the decision of the Apex Court in the case of **Director, Institute of Management Development Vs. Pushpa Srivastava reported in AIR 1992 SC 2070** and more particularly the observations made at para 20 and 23, whereby the view taken is that in absence of any rule, the appointment which was purely on adhoc and contractual basis for a limited period comes to an end upon the expiry of the said period.

The reference may also be made to the another decision of the Apex Court in the case of **State of M.P. and Anr. Vs. Dharam Bir reported in 1998(6) SCC 165** and more particularly, the observations made at para 26 and 31, whereby the view taken by the Apex Court is that when regularly selected candidates are available, the human approach would require the Court to prefer the selected candidate and not the person who does not posses even the requisite qualification.

Reference may also be made to the another decision of the Apex Court in the case of **Allahabad Bank Vs. Premsingh reported in 1996(10) SCC 597,** particularly the observations made at para 9 whereby, the view taken is that, even in case of daily wager, employment is on day to day basis and it comes to an end upon expiry of the day and therefore the direction of the Tribunal for treating the continuous service consequently entitling the usual pay and the allowance were not found as legal by the Apex Court.

6. If the aforesaid principles laid down are taken into consideration, no relief can be granted to the petitioners as prayed in the petition.

7. In the result, the petition fails and the same is dismissed and considering the facts and circumstances, there will be no order as to costs.

(JAYANT PATEL, J.)

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